

**MINUTES
of the
FIRST MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE
and the
DROUGHT SUBCOMMITTEE**

**June 10, 2013
Santa Fe**

The first meeting of the Water and Natural Resources Committee (WNRC) was called to order by Senator Phil A. Griego, chair, at 9:15 a.m. on Monday, June 10, 2013, in Room 307 of the State Capitol.

Present

Sen. Phil A. Griego, Chair
Rep. George Dodge, Jr., Vice Chair
Rep. Phillip M. Archuleta
Rep. Paul C. Bandy
Sen. Joseph Cervantes
Rep. Stephen Easley
Rep. Brian F. Egolf, Jr.
Rep. William "Bill" J. Gray
Rep. Emily Kane
Rep. Larry A. Larrañaga
Sen. Cliff R. Pirtle
Sen. Sander Rue
Rep. Mimi Stewart
Rep. James R.J. Strickler
Sen. Peter Wirth
Sen. Pat Woods

Advisory Members

Sen. Carlos R. Cisneros
Sen. Lee S. Cotter
Rep. Anna M. Crook
Rep. Candy Spence Ezzell
Sen. Ron Griggs
Rep. Rodolpho "Rudy" S. Martinez
Rep. W. Ken Martinez
Sen. Cisco McSorley
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Nancy Rodriguez

Absent

Rep. Dona G. Irwin
Sen. George K. Munoz
Sen. Benny Shendo, Jr.
Rep. Don L. Tripp

Rep. Cathrynn N. Brown
Sen. Pete Campos
Rep. Gail Chasey
Rep. Sharon Clahchischilliage
Rep. Nora Espinoza
Sen. Stuart Ingle
Sen. Gay G. Kernan
Rep. James Roger Madalena
Sen. Steven P. Neville
Sen. John C. Ryan
Rep. Henry Kiki Saavedra

Rep. Tomás E. Salazar
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. Jeff Steinborn
Rep. Bob Wooley

Staff

Jon Boller, Legislative Council Service (LCS)
Gordon Meeks, LCS
Jeret Fleetwood, LCS

Guests

The guest list is in the original meeting file.

Handouts

Handouts and other written testimony can be found in the meeting file or on the New Mexico Legislature's web site.

Monday, June 10

Senator Griego began the meeting by having members of the committee and staff introduce themselves.

Interim Committee Procedures

John Yaeger, assistant director for legislative affairs, LCS, provided the committee with an overview of interim committee procedures, including quorum requirements, the calendar listing proposed meeting dates for all committees and the blocking provision.

Senator Griego raised a concern about potential lake closures in several state parks and asked that a representative from the State Parks Division of the Energy, Minerals and Natural Resources Department (EMNRD) make a brief presentation to the committee.

Status Reports — Office of the State Engineer (OSE) and Interstate Stream Commission (ISC)

Scott Verhines, state engineer, and Estevan Lopez, director, ISC, introduced various members of their staff to the committee and provided the committee with status reports on a number of water-related issues.

Mr. Verhines explained that New Mexico is in the midst of unprecedented drought conditions and that the last two years have been the hottest and driest in the last 118 years on record. He characterized the drought as a slow-moving disaster, pointing out that the town of Maxwell ran out of water last year and that Magdalena had already run out of water this year.

Mr. Verhines also noted that the catastrophic wildfires seen in the region have a huge impact on the drought, affecting watersheds, forcing the closure of some areas and causing water quality issues for downstream users. He also indicated that federal Endangered Species Act (ESA) compliance issues only add to the tension over water that exists statewide. However, Mr. Verhines suggested that working toward a solution, rather than fighting, is the best approach to address New Mexico's water issues.

Mr. Verhines went on to explain that the OSE is responsible for protecting New Mexico's water from other states, using taxpayer money wisely, protecting senior water rights, ensuring that water rights are put to beneficial use, helping to build a strong economy and administering procedures to deal with current conditions.

John Longworth, OSE, provided the committee with an update regarding drought conditions in New Mexico, including maps showing the state receiving precipitation well below the average for the first half of 2013. He also provided the committee with maps detailing the growth of exceptional drought conditions (the worst possible classification) throughout the state, as well as precipitation and temperature outlooks for the rest of 2013. Mr. Longworth pointed out that projections are for below-average precipitation and above-average temperatures for the southwestern United States for the remainder of the year. He also addressed spring and summer stream flow maps for the region, which call for below-average flows for the Colorado, Rio Grande and Arkansas river basins.

Mr. Verhines and Mr. Lopez took turns providing the committee with status reports on various water-related issues.

Mr. Verhines began with Active Water Resource Management (AWRM), noting that after several years of litigation, and nine years after the legislature enacted the authorizing legislation, the New Mexico Supreme Court in November 2012 affirmed the authority of the state engineer to implement AWRM. He explained that the term refers to a number of activities by the OSE ranging from physical water distribution, measurement and management through OSE water masters, legal activities, such as adjudications, water rights licensing and enforcement actions for overuse or illegal use of water, to river management activities in order to meet water compact delivery obligations, maintain habitat and restore species covered by the ESA. He noted that district specific rules are being promulgated in seven priority basins but that efforts are currently being concentrated in three basins: the San Juan River, the lower Rio Grande and the Pecos River.

Mr. Lopez addressed Indian water rights settlements, noting that while New Mexico is responsible for contributing \$50 million to the billion-dollar Navajo Nation Water Rights Settlement Project, the state has already contributed just over that amount and, depending on how much of those contributions New Mexico gets credit for, may have met its obligation. Mr. Lopez also pointed out that the Taos and Aamodt settlements have each executed its revised settlement agreements and that the court will conduct expedited inter se proceedings to determine whether

to approve the settlement agreements. According to Mr. Lopez, the state's cost-share for the three federally authorized settlements is approximately \$130 million, of which \$35 million has already been appropriated to the Indian Water Rights Settlement Fund (IWRSF) since 2005. He noted that the OSE and ISC advocate funding \$15 million per year for the IWRSF in order to meet the state's obligations under the settlement agreements in the coming years. He also indicated that the State-Tribal Summit is scheduled for later in June and that a survey of tribal leaders has identified tribal water rights as a priority.

Mr. Verhines discussed issues related to the Jal basin, explaining that Midland, Texas, has initiated plans to drill wells on the border between Texas and New Mexico and begin pumping water to Midland from the same aquifer that Jal relies on for 100 percent of its water. He said that officials from Jal and Midland have met, but the issue remains unresolved.

Mr. Verhines also discussed the Eastern New Mexico Rural Water Supply Project, or the Ute Pipeline as it is commonly known. He indicated that while construction has begun on the project, litigation against the federal Bureau of Reclamation has been initiated by the Village of Logan. Mr. Verhines explained that a major concern of Logan residents is that the recreational value of the Ute Reservoir may be diminished if the water in it is taken and put to use. Mr. Verhines also pointed out that 13 of 18 boat docks that were permitted decades ago by the ISC have been revoked because of safety concerns over low water conditions.

Mr. Lopez discussed the 2004 Arizona Water Settlements Act, saying that the number of proposals being considered has been narrowed down to 16 from about 40 and that the hope is to have the ISC's decisions on which projects to pursue before the December 2014 deadline.

Mr. Verhines discussed the Western States Water Council, pointing out that 18 states are members of the council, which helps provide water policy advice. He noted that one of the major accomplishments of the council is the formation of the Western States Federal Agency Support Team, which should better facilitate coordination between states and several federal agencies.

Mr. Lopez discussed the Pecos River Settlement Agreement, explaining that compliance with the settlement and extreme drought conditions have necessitated augmentation pumping from two well fields operated by the ISC in order to provide water to Carlsbad Irrigation District (CID) farmers. However, he indicated that the ISC will not reach its target pumping levels this year. Mr. Lopez also noted that several protests have been filed regarding the ISC's Seven Rivers area well, pointing out that there is a high probability of litigation over the issue.

Mr. Lopez went on to discuss a priority call on the Pecos River. He explained that a call was initiated by two CID resolutions earlier this year, which in turn initiated a series of events, including meetings between the five parties to the Pecos River Settlement Agreement, compiling of a list of junior and senior water rights in the Pecos River Basin and updates to basin-specific AWRM regulations and river models.

Mr. Lopez also discussed ESA issues on the Pecos River, particularly as they relate to the Pecos bluntnose shiner. He explained that stretches of the river went intermittently wet and dry in 2012 and that the biological opinion does not account for such drying. As such, Mr. Lopez said a reconsultation of the biological opinion is almost certain in 2013, with unknown, but likely adverse, impacts to water operations resulting from possible changes to the biological opinion.

Mr. Verhines discussed the Water Trust Board's project application process, explaining that the process has been reviewed and that the board approved revisions intended to streamline the process, including splitting the application into a spring and fall filing. He also noted that further revision to the process may occur in 2014.

Mr. Verhines discussed the 2008 Rio Grande Project Operating Agreement among the Bureau of Reclamation, Elephant Butte Irrigation District (EBID) and El Paso County Water Improvement District Number One (EP1), which has reallocated about 170,000 acre-feet of water per year from the EBID to EP1. He explained that the reallocation of surface water has forced EBID farmers to rely on ground water pumping but that the effects of that pumping, such as reduced surface water for aquifer recharge, are beginning to show. He noted that the attorney general and the City of Las Cruces are plaintiffs in a lawsuit against the Bureau of Reclamation, EBID and EP1 over the release of New Mexico's Rio Grande Compact credit water to EP1 and Mexico and the operating agreement.

Mr. Verhines briefly discussed litigation involving the OSE, including challenges to the constitutionality of the domestic well statute.

Mr. Verhines also discussed ESA issues on the Rio Grande, explaining that the 2003 Biological Opinion will expire soon and that while a new one is being developed, the possibility of litigation over a new opinion does exist.

Mr. Verhines updated the committee on the active adjudications in the state, particularly the ones on the Chama River, Pecos River and lower Rio Grande. He pointed out that the OSE Litigation and Adjudication Program continues to experience a high vacancy rate in the core technical and legal positions.

Mr. Verhines and Mr. Lopez went on to discuss flood control issues on the middle Rio Grande, noting that the federal government has placed increased emphasis on addressing unsafe levee conditions nationwide. They said that the ISC is collaborating with the Middle Rio Grande Conservancy District as local sponsors on an Army Corps of Engineers project to replace over 50 miles of non-engineered levee near Socorro at a cost of \$290 million.

Mr. Verhines discussed a situation on the Chama River, explaining that particularly low flows on the river below Abiquiu Reservoir may require curtailment of some water diversions. He noted that some northern acequia users have been using water meant for more senior downstream users but that the parties involved are trying to resolve the issue without a priority

call.

Finally, Mr. Verhines and Mr. Lopez touched on issues related to lower-than-average flows in the Colorado River Basin, regional and state water planning and dam safety.

Tommy Mutz, director, State Parks Division, EMNRD, provided the committee with an update on water levels and boat ramps at some of the lakes in eastern New Mexico, particularly Conchas Lake. He explained that water levels at Conchas Lake are at the lowest level ever recorded and that, since jurisdictional boundaries are determined by vertical elevation, the State Parks Division has no jurisdiction at the lake. Mr. Mutz went on to note that the low water levels have left the existing boat ramps well above water and that it is nearly impossible to back a boat into the water at the existing grade of the slope leading to the lake. He indicated that airplane landing-strip mats are being placed on the southern side of the lake to try to alleviate the issue but pointed out that having only one ramp available could present a safety issue. Mr. Mutz explained that there is little to no access for boats to the lake, which is placing a significant burden on the division's finances, as some portion of money for the division comes from park fees.

Questions and comments from the committee included:

- steps the legislature can take to help address staff shortages at the OSE;
- that a bootleg ramp still exists at Conchas Lake;
- how best to resolve drought issues and plan for the future;
- the concept of making emergency funding available through the Water Trust Board;
- that Governor Martinez's executive order that capital outlay recipients must have up-to-date audits creates problems for smaller entities, like acequias, that do not have funding available to perform audits;
- a developer bought a farm in Lea County and subdivided it before a law requiring water plans for subdivisions took effect;
- issues with ISC pumping near Brantley Reservoir and oversight of the well fields near Lake Arthur and Seven Rivers;
- the transfer of water rights into those well fields does not mean more volume will be pumped but, instead, offers flexibility;
- middle Rio Grande water storage and potential plans by the Bureau of Reclamation to release more water to Texas;
- priorities of the OSE are: implementation of AWRM, completion of the Indian water rights settlements, meeting the deadline for the 2004 Arizona Water Rights Settlement, resolution of the Pecos River Settlement Agreement, the Rio Grande Operation Agreement litigation and addressing ESA issues on all of the state's rivers;
- Colorado and New Mexico water management issues, including New Mexico ditches that are diverted into Colorado and operate according to a memorandum of understanding;
- the status of a lawsuit involving Albuquerque drinking water;
- planning by the Bureau of Reclamation on the Colorado River;

- one-third of the farmland in the lower Rio Grande is currently fallow because of drought conditions;
- the EBID is still paying district assessments, but it is not receiving any water; and
- the difference between interstate compact compliance and actual delivery of water.

2013 Interim Work Plan, Itinerary and Meeting Schedule

The committee added the following items to the proposed work plan:

- climate change issues;
- conservation;
- tribal water issues;
- mining, oil and gas exploration and water use;
- domestic well issues; and
- innovations in drought-tolerant plants.

The committee also selected the following meeting dates and locations:

- July 25-26 Clovis
- August 29-30 Farmington
- October 15-16 Las Cruces
- November 14-15 Santa Fe.

Discussion of Drought Subcommittee Work Plan

The committee also discussed the Drought Subcommittee's work plan. Senator Cervantes emphasized that he wants to avoid redundancy between the subcommittee and the whole committee. The subcommittee also agreed to meet the day before the whole committee, selecting the following dates and locations:

- July 24 Clovis
- August 28 Farmington
- October 14 Las Cruces.

Department of Game and Fish

Cal Baca, Department of Game and Fish, provided the committee with an update on the status of the potential listing of the lesser prairie chicken as an endangered species. He explained that the bird could be listed but that five states and most of the stakeholders involved have developed a conservation plan. Mr. Baca explained that there could be significant impact to industry, agriculture and landowners if the bird is listed. He pointed out that the comment period on the conservation plan has been reopened until June 20. Mr. Baca also said that the recommendation is currently against listing the bird, explaining that while its population appears to go up and down according to drought cycles, their numbers appear to be growing in Kansas and are stable in New Mexico.

Adjournment

There being no further business, the committee adjourned at 1:05 p.m.